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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/717,038	11/19/2003	Frank Yang	PAT-1521	7320
7590	11/08/2005		EXAMINER	
Raymond Sun 12420 Woodhall Way Tustin, CA 92782			NGO, LIEN M	
			ART UNIT	PAPER NUMBER
			3754	

DATE MAILED: 11/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/717,038	YANG ET AL.	
	Examiner	Art Unit	
	LIEN TM NGO	3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>10/12/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 23 and 28-33 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

“the pivot axis positioned inside the interior” is not supported in the specification,

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 21-22, 24 and 25 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Glowka (2,271,918). Glowka discloses, in figs. 1 and 2, a trash can assembly, comprising: an outer shell 1 having an upper end 4 and a lower end 10; a lid 11 pivotably coupled to the upper end of the outer shell for movement between an open position and a closed position, an interior defined by the outer shell and the lid; a pedal 31 pivotably coupled to the lower

Art Unit: 3754

end of the outer shell, and having an inner end; a link rod 26 having an upper end pivotably coupled to the lid and a lower end coupled to the inner end of the pedal, with the entire link rod being positioned inside the interior, and a support frame 6 attached to the upper end of the outer shell, with the upper end of the link rod extending through the support frame (see fig. 2); wherein a part of the support frame extends inside the interior in a manner such that an opening is defined between the upper end of the outer shell and the part of the support frame, with the upper end of the link rod extending through the opening (see fig. 2); wherein the lid is pivotably coupled to the upper end of the outer shell about a pivot axis for movement between the open position and the closed position; wherein the part of the support frame is a straight wall, and wherein the opening lies inside the interior.

To the degree it can be argued that Glowka does not disclose the support frame been plastic. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the Glowka trash can or support frame by plastic, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

5. Claims 21, 22, 24 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Baumann et al. (4,164,178). Baumann et al. discloses, in fig. 1, a trash can assembly, comprising: an outer shell 1 having an upper end and a lower end 11; a lid 12 pivotably coupled to the upper end of the outer shell for movement between an open position and a closed position, an interior defined by the outer shell and the lid; a

pedal 30 pivotably coupled to the lower end of the outer shell, and having an inner end;
a link rod 60 having an upper end pivotably coupled to the lid and a lower end coupled to the inner end of the pedal, with the entire link rod being positioned inside the interior, and a plastic support frame 70 attached to the upper end of the outer shell, with the upper end of the link rod extending through the support frame; wherein a part of the support frame extends inside the interior in a manner such that an opening is defined between the upper end of the outer shell and the part of the support frame, with the upper end of the link rod extending through the opening ; wherein the lid is pivotably coupled to the upper end of the outer shell about a pivot axis for movement between the open position and the closed position; wherein the part of the support frame is a straight wall, and wherein the opening lies inside the interior.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glowka in view Koda (4,953,740).

Koda teaches, in fig. 16, a support frame 100 comprising grooves 34 and ridges 102,

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide grooves and ridges on the support frame of

Art Unit: 3754

Glowka, as taught Koda, in order to facilitate of retaining a trash bag to be placed inside the trash can.

Response to Arguments

8. Applicant's arguments with respect to claims 21-33 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LIEN TM NGO whose telephone number is 571-272-4545. The examiner can normally be reached on Monday through Friday from 8:30 AM -6:00 PM.

Art Unit: 3754

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL MAR can be reached on 571-272-4906. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LIEN TM NGO
Primary Examiner
Art Unit 3754

November 1, 2005

